UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Zervas

Opposition No. 104,286

Macmillan, Inc.

v.

Dolores M. Winner

Before Walters, Chapman and Wendel, Administrative Trademark Judges.

By the Board.

Applicant Dolores Winner seeks registration of the mark RAGGEDY BEAR & THE RAGGEDIES for "publications; namely, travel, tracing, coloring and comic books featuring stories about a fictional bear, rag dolls and other cartoon characters" in International Class 16.[1]

Opposer Macmillan, Inc. has opposed registration of applicant's mark on the grounds that opposer is engaged in the worldwide business of publishing printed material such as books and catalogs and related products such as video and

[1] Application Serial No. 75/031,073 was filed on December 11, 1995 and is based on an intent-to-use the mark in commerce.

audio cassettes; that RAGGEDY ANN and RAGGEDY ANDY are the names of two colorful rag dolls created in 1915 to which opposer has rights; that RAGGEDY ANN and RAGGEDY ANDY are featured in a series of publications; and that opposer has registered the marks RAGGEDY ANN and RAGGEDY ANDY for a "series of children's books."[2] Further, opposer asserts that opposer has regularly used the names and the marks RAGGEDIES or RAGGEDYS to refer collectively to these characters and their stuffed animal friends in publications. Opposer maintains that applicant's mark, when used on applicant's goods, is confusingly similar to RAGGEDY ANN and RAGGEDY ANDY, and other marks in opposer's family of marks such as RAGGEDY ANN & ANDY, THE ADVENTURES OF RAGGEDY ANN & ANDY, and RAGGEDIES, as used on a wide variety of goods including children's books, newsletters, and catalogues.

In her answer, applicant denies all of the allegations of the notice of opposition.

This case now comes up on opposer's motion for summary judgment (filed March 16, 1998 via a certificate of mailing).

[2] Reg. No. 1,008,384, issued April 8, 1975 for "children's books." The claimed dates of first use and first use in commerce are 1918.
Reg. No. 1,007,388 issued March 25, 1975 for "series of children's books." The claimed dates of first use and first use in commerce are 1920.

In moving for summary judgment on the issue of likelihood of confusion, opposer contends that the dominant parts of opposer’s marks are RAGGEDY and/or RAGGEDIES; that RAGGEDY and/or RAGGEDIES are the legally dominant elements of applicant’s mark because applicant has disclaimed the term “bear;” that the marks are similar aurally and visually; that applicant's mark “co-opts” RAGGEDY and RAGGEDIES which are the most salient and distinctive features of opposer's trademark and mimics the cadence or sequence of opposer's RAGGEDY ANN & ANDY mark; that opposer's marks are entitled to a wide scope of protection because they are commercially strong, part of a family of marks and have conceptual strength in that the marks are “arbitrary, or at a minimum suggestive;” that the respective goods of the parties are legally identical because there is an overlap between such goods and applicant has not listed any limitation on the nature and character of the products on which she intends to use her mark; and that the similarities between applicant's RAGGEDY BEAR character shown in a sample of use submitted with applicant's application and opposer's RAGGEDY ANN and RAGGEDY ANDY characters indicate that applicant selected her mark with

the specific intent to trade on the goodwill associated with opposer's marks.[3]

As evidence in support of the summary judgment motion, opposer submitted the declaration of Carol Roeder, who is vice-president for subrights and international markets of opposer, and of Marni Beck, who is an attorney with the law firm representing opposer in the present Board proceeding.

Ms. Roeder declares that RAGGEDY ANN and RAGGEDY ANDY were created in 1915 and are colorful rag dolls with triangle noses, curly mop hair, horizontally-striped stockings and coverups with suspender tops; that in 1918, the first of hundreds of published stories featuring these rag dolls was published which describe the adventures of dolls and toys of all types that magically come to life in a secret place referred to as RAGGEDY LAND; that RAGGEDY ANN and RAGGEDY ANDY have consistently been used as marks; that opposer has regularly used RAGGEDIES or RAGGEDYS as names and marks to refer collectively to RAGGEDY ANN and RAGGEDY ANDY and their stuffed animal friends ("the Raggedy Characters") in publications, and as marks to identify

[3] For example, opposer notes that RAGGEDY BEAR is dressed in RAGGEDY ANN clothing and RAGGEDY BEAR is accompanied by a doll which is reminiscent of RAGGEDY ANN and is conspicuously named "Fannie Annie." See opposer's brief in support of opposer's motion for summary judgment at p. 2.

goods;[4] that opposer and its predecessors have used RAGGEDY ANN, RAGGEDY ANDY and other marks including RAGGEDIES ("the Raggedy Marks") on a wide variety of merchandise, including printed materials such as hardcover, mass-market and trade paper books and catalogues;[5] that opposer has licensed the right to use the Raggedy Characters and the Raggedy Marks to dozens of companies on and in connection with various goods such as doll patterns, Christmas decorations, a children's television program, syndicated and animated television programs and movies, collectible ceramic plates, costume jewelry, umbrellas, dolls, sleeping bags, mats, play tents, puzzles, playing cards, posters, tins, key chains, greeting cards, stickers, balloons, jigsaw puzzles, board games,

[4] Opposer asserts that opposer has created a rag doll dog named RAGGEDY ARTHUR (a/k/a/ RAGGEDY DOG) and his feline friend named RAGGEDY CAT. Also, opposer asserts that opposer introduced the LITTLE RAGGEDYS in 1990, which is a collection of infant-geared RAGGEDY characters including LITTLE RAGGEDY ANN, LITTLE RAGGEDY ANDY, LITTLE RAGGEDY PUPPY and LITTLE RAGGEDY KITTY.

[5] Opposer's trademark portfolio also includes federal registrations for: (1) THE ADVENTURES OF RAGGEDY ANN & ANDY for animated television programs (Reg. No. 1,852,686); (2) RAGGEDY ANN for costume jewelry (Reg. No. 984,956); (3) RAGGEDY ANN & ANDY for jewelry (Reg. No. 1,119,204); (4) RAGGEDY ANN'S for toy embroidery sets (Reg. No. 389,294); (5) RAGGEDY ANN AND ANDY for socks and stocking (Reg. No. 1,058,505); (6) RAGGEDY ANN & ANDY for umbrellas (Reg. No. 1,063,893); (7) RAGGEDY ANN for paper patterns and printed appliques for construction of dolls and doll wardrobes (Reg. No. 1,131,749); (8) RAGGEDY ANN & ANDY for child care center services (Reg. No. 1,124,584); (9) RAGGEDY ANN & ANDY for children's pools and sand boxes (Reg. No. 1,094,596); (10) RAGGEDY ANN & ANDY for inflatable balls (Reg. No. 1,103,515); (11) RAGGEDY ANN & ANDY for toys and related goods (Reg. No. 1,623,799); (12) RAGGEDY ANN for transistor radios (Reg. No. 1,103,801); (13) RAGGEDY ANN & ANDY for transistor radios (No. 1,114,028); and (14) RAGGEDY ANN for jewelry boxes (Reg. No. 1,043,479).

various apparel and child care services; that the Raggedy Marks and the products and services sold under these marks are offered for sale in bookstores, the Internet, gift stores, specialty collectible stores and other retail and wholesale establishments nationwide and worldwide, including major mass merchandisers; that sales of licensed merchandise sold under these marks have exceeded $17 million; that in the past four years, opposer has received over one-half million dollars in revenue in connection with its licensing of the Raggedy Marks; that through its extensive national and international marketing, advertising and distribution of publications and related goods featuring the Raggedy Characters and the Raggedy Marks, opposer has developed widespread public recognition of, and extensive goodwill of great value in, the Raggedy Marks, and has received unsolicited media coverage in newspapers, magazines and other media; that there are yearly festivals and dozens of fan clubs devoted to the Raggedy Characters; and that there have been musicals and full length feature films featuring the Raggedy Characters.

Ms. Beck, through her declaration, provides copies of applicant’s application papers, the notice of opposition, opposer’s discovery requests and applicant’s responses thereto, and excerpts from applicant’s discovery deposition.

In her response to opposer's motion for summary judgment, applicant contends that her mark is not RAGGEDY ANN BEAR and points out differences in appearance between opposer's dolls and RAGGEDY BEAR and the rag dolls depicted in her goods. Applicant did not submit any affidavits or declarations; rather, she submitted only argument and a copy of her publication.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). The purpose of summary judgment is to avoid an unnecessary trial where additional evidence would not reasonably be expected to change the outcome. See *Pure Gold, Inc. v. Syntex (U.S.A.), Inc*. 739 F.2d 624, 222 USPQ 741 (Fed. Cir. 1984). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). The evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. See *Opryland USA, Inc. v. Great American Music Show, Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

Upon careful consideration of the record and the arguments of the parties, we believe that based on the evidence submitted by the parties, there is no genuine issue of material fact concerning opposer's likelihood of confusion claim and that opposer is entitled to judgment thereon as a matter of law.

Initially, we consider opposer's claim of priority of use and standing to bring opposer's claim. Opposer has pleaded ownership of several federal trademark registrations, including Registration Nos. 1,008,384 and 1,007,388 for RAGGEDY ANN and RAGGEDY ANDY, respectively, which show first use dates of roughly eighty years ago.[6] As an exhibit to Ms. Roeder's declaration, opposer provided certified status copies of Registration Nos. 1,008,384 and 1,007,388, showing title in opposer's name. Applicant, in her opposition to the summary judgment motion, does not dispute opposer's first use of its marks on its goods. In view of the above, there is no genuine issue of material fact concerning opposer's priority of use of its marks or opposer's standing.

The determination of whether a likelihood of confusion exists is made by evaluating and balancing those of the thirteen evidentiary factors set forth in *In re E.I. du Pont*

[6] In contrast, applicant filed her intent-to-use application on December 11, 1995.

de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973) shown to be applicable to a particular case and for which evidence has been made of record. As noted in the *du Pont* decision itself, each of the factors may from case to case play a dominant role.

In this case, applicant's mark is comprised of two parts; (a) RAGGEDY BEAR, and (b) THE RAGGEDIES.[7] RAGGEDY BEAR and opposer's registered marks; i.e. RAGGEDY ANN and RAGGEDY ANDY, each comprises the three syllable word RAGGEDY followed by a one syllable word. As such, opposer's marks and the first portion of applicant's mark have the same cadence and word sequence. In meaning, the marks are highly similar in that they identify a character that is ragged. Further, applicant adds "& the RAGGEDIES" to RAGGEDY BEAR. Opposer has used RAGGEDIES since 1990 on a collection of infant-geared RAGGEDY characters including LITTLE RAGGEDY ANN, LITTLE RAGGEDY ANDY, LITTLE RAGGEDY PUPPY and LITTLE RAGGEDY KITTY. Applicant has merely combined two of opposer's marks and substituted the term BEAR for ANN or ANDY. Thus, the marks, when taken as a whole, are highly similar in sound and meaning.

[7] The component parts of a mark may be viewed as a preliminary step in determining probable customer reaction to the conflicting composite as a whole. See Vol. 3, J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §23.41 (4th edition).

Additionally, opposer has offered persuasive evidence that its marks are famous and applicant has not controverted opposer's evidence. RAGGEDY ANN and RAGGEDY ANDY have been in continuous use on hundreds of different goods for roughly eighty years; the RAGGEDY ANN and RAGGEDY ANDY characters have been featured in musicals, full length feature films and yearly festivals; dozens of fan clubs have been formed which are devoted to RAGGEDY ANN and RAGGEDY ANDY; and goods sold under these marks have generated millions of dollars in licensing revenues. Famous marks enjoy a wide latitude of legal protection. *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 862 (1992).

Turning to the similarity of the goods and their trade channels, we note that applicant's identification of goods does not include any limitation restricting the goods to particular trade channels. Accordingly, the Board must presume that the application encompasses all goods of the type described in the application and that they move in all normal channels of trade and that they are available for all potential customers. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Because both applicant's and opposer's goods are virtually identical; i.e. books for children, and applicant

has not offered evidence to the contrary,[8] we conclude that the goods may be sold in identical locations to the same consuming public.

Opposer has also raised an allegation about applicant's intent in adopting her mark. For purposes of determining likelihood of confusion, as we have no evidence on this point, we assume that applicant acted in good faith in adopting her mark.

Upon consideration of all the relevant *du Pont* factors, (similarity of the marks, similarity of the goods/services, the fame of opposer's mark, and the parties' respective trade channels),[9] we find a likelihood of confusion between applicant's and opposer's marks, when used on their respective goods.

Finally, we point out the following:

> [T]he field from which trademarks can be selected is unlimited . . . there is therefore no excuse

[8] When a motion for summary judgment is made and supported as provided for in Fed. R. Civ. P. 56, as is the case here, the party against whom summary judgment is sought may not rest on mere allegations, but must file counter-affidavits or other matter as set forth in Fed. R. Civ. P. 56 to show that there is a genuine issue for trial.

[9] Opposer has also asserted that the marks are part of a family of marks. However, opposer has not provided evidence such as advertising and promotional materials showing that the purchasing public recognizes RAGGEDY; i.e. the common element of opposer's marks, is indicative of a common origin of opposer's goods. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1891 (CAFC 1991); and *Ladish Co v. Dover Corporation*, 192 USPQ 462, 463-64 (TTAB 1976). Opposer's ownership of a number of registrations for marks containing the prefix RAGGEDY is insufficient, *per se*, to establish a family of marks. *Polaroid Corporation v. Richard Manufacturing Company*, 341 F.2d 150, 144 USPQ 419 (CCPA 1965).

> for even approaching the well-known trademark of a competitor . . . and that all doubt as to whether confusion, mistake, or deception is likely is to be resolved against the newcomer, especially where the established mark is one which is famous. . . .

Planters Nut & Chocolate Co. v. Crown Nut Co., 305 F.2d 916, 924-25, 134 USPQ 504, 511 (CCPA 1962).

Decision: Opposer's motion for summary judgment is granted, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

C. E. Walters

B. A. Chapman

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial
and Appeal Board